IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22483 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANIFBHAI ALIAS ANIYO LAGJIBHAI TAMAYACHE
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR ARVIND K THAKUR for the petitioner

MR ND GOHIL, AGP FOR respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/06/2006

ORAL JUDGMENT

By filing this petition the petitioner – detenu has challenged his detention order dated 27th October 2005 by which he is detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter

referred to as “the PASA Act”). The petitioner is detained as “bootlegger” under Section 3(1) read with Section 2(b) of the PASA Act. In the grounds of detention there is a reference of one solitary pending criminal case registered against the petitioner-detenu under the Bombay Prohibition Act.

Mr Arvind Thakur, learned advocate for the petitioner submitted that simply because a criminal case under the Bombay Prohibition Act is registered against the petitioner, the petitioner cannot be termed as a bootlegger and it can, at the most, be said that the petitioner has violated public order or that his activities are prejudicial to public health. He further submitted that only because the petitioner was alleged to have possessed Indian Made Foreign Liquor, it cannot be said that this activity is prejudicial to public health. He further submitted that it cannot be said that consumption of foreign liquor affects the public health unless there is some material on record in this behalf. In order to substantiate her say, Mr Thakur has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph no.7 :

> “7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to

> him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

On the other hand, Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health.

It is required to be noted that in the detention order it is not mentioned as to how the activity of the petitioner is prejudicial to public health and it can safely be said that the petitioner may be guilty of violating law of the land but by selling Indian Made Foreign Liquor or by possessing the same, it cannot be said that it is prejudicial to public health.

Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

In view of what is stated herein above, this petition is allowed. Order of detention dated 22-10-2005 is quashed and set aside. The petitioner – Hanifbhai alias Lagjibhai Tamayache is ordered to be released forthwith unless her presence is required in connection with any other case. Rule is made

absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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